

# Sumter City-County Board of Zoning Appeals

September 14, 2011

**BOA-11-19, 13 Alma Drive (County)**

The applicant is requesting a variance from the size restriction on accessory buildings.



Appeals - Variance - Special Exception

# Sumter City-City Zoning Board of Appeals

September 14, 2011

**BOA- 11-19, 13 Alma Dr (County), William D. Dangerfield**

## **I. THE REQUEST**

**Applicant:** William D. Dangerfield

**Status of the Applicant:** Property owner

**Request:** The applicant is requesting a variance from the size restriction on accessory buildings.

**Location:** 13 Alma Dr.

**Present Use/Zoning:** Residential / General Residential (GR)

**Tax Map Reference:** 225-13-01-003

## **II. BACKGROUND**

The owner, William D. Dangerfield, has constructed a 1,600 square foot accessory structure in the side yard of his property located at 13 Alma Dr. in Sumter County. (See photo, Left)



The parcel is +/- 0.80 (one-eighth of an) acre in size and is zoned GR. Side and rear setbacks for accessory structures in this district are 5'. **This structure was erected without a building**

**permit.** There are also four existing accessory structures on the property. Two of these are in poor condition and the applicant has stated that these are to be removed.



**Above:** A photo of the front of the property.

The maximum size for accessory structures applicable to this lot according to Article 4.g.2.c is 1,160 square feet. Therefore, in order to permit their 1,600 square foot building, the applicant would need a variance of 440 square feet.



**Above:** Diagram of accessory structures on the parcel.

- 1 – (red) The new accessory building that measures 1600 square feet.
- 2 – (blue) 470 square foot carport to be removed
- 3 – (blue) 120 square foot exempt from size requirement
- 4 – (blue) 40 square foot exempt from size requirement
- 5 – (blue) 760 square foot structure to be removed

If the applicant removes buildings 2 and 5, as shown in the diagram above, then the only accessory structure that will remain on the property (that is above the 120 square foot size



exemption) will be building 1. Therefore the 440 square foot variance is requested based on the size of this building alone.



**Above:** The carport to be removed is on the left, and on the right are the two accessory structures that are exempt from the ordinance because they are less than 120 square feet.

**Below:** The old shed (indicated as #5 on the diagram, previous page) that the applicant has stated will also be removed.



### **III. FOUR PART TEST**

- 1) ***There are extraordinary and exceptional conditions pertaining to the particular piece of property.***

There are no extraordinary conditions on this property. The parcels on this street vary significantly in size, shape and location of structures. However, this parcel is relatively large in comparison to other parcels on the street and therefore has a relatively large accessory structure area allotment.

- 2) ***These conditions do not generally apply to other property in the vicinity.***

Conditions apply to all surrounding properties. As stated, this property is unique in its size, shape and other characteristics. Surrounding properties vary in size from 0.3 to 0.9 acres, with many different shapes and layouts. Several of the parcels on the street are much smaller, and therefore would not be permitted to construct 1160 square feet of accessory structures as this parcel is given.



- 3) ***Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***



There is already a house and four other existing accessory structures on this parcel, other than the one in question. The property owner could have replaced the existing accessory structures with new ones, because of their poor condition, but using the same footprint so as not increase the nonconformity of the site per Article 6, Section C; 6.c.6..

***4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.***

The authorization of this variance will pose a substantial detriment to the adjacent property and to the public good. The size of accessory structures established for residential parcels in the GR zoning district are in place in order to establish a reasonable relationship between residential dwellings on zoned lots and any associated accessory structures, and therefore to protect abutting properties from encroachment and nuisance caused by uses, noise, crowding, and drainage from buildings on other parcels. In addition, granting the applicant approval after the fact of constructing a building in direct violation of ordinance requirements without meeting the four-part test sets an undesirable precedent that could undermine the regulations as applied to all other parcels in the district. City Council approved the development standards established in this district and in all other districts to protect the health, safety and welfare of the public.

#### **IV. STAFF RECOMMENDATION**

Staff recommends denial of this request based upon the fact that the requirements of the state-mandated four-part test have not been met; there is no hardship in this case.

While the applicant may have invested time, labor, and money into this structure, it was never permitted as built, and so in order for it to remain he must obtain a variance through the State mandated four-part test. This test does not include time, labor, and money investments. In fact, case law has shown that “in order to obtain a variance on the grounds of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation.”<sup>1</sup> In addition, and especially applicable to this situation: “An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner, nor can one who purchases property after the enactment of a zoning regulation complain that the nonconforming use would work a hardship upon him.”<sup>2</sup>

<sup>1</sup> *Hodge v. Pollock*, 223 SC342, 75 S.E. 2d (1953), *Colbert v. Krawcheck*, 299 SC299, 384 S.E.2d, 384 S.E.2d 710 (1989), *Restaurant Row Associates v. Horry City*, 335 SC209, 516 S.E.2d 442 (1999), certiorari denied, 528 United States 1020, 120 Supreme Court 528, 145 L.Ed 2d 409 (1999).

<sup>2</sup> *Rush v. City of Greenville*, 246 SC268, 143 S.E.2d 527 (1965), *Georgetown City Building Official v. Lewis*, 290 SC513, 351 S.E.2d 584 (Ct. App. 1986), *Restaurant Row Associates v. Horry City*, *supra*.

Other factors applicable to a variance are also prescribed by SC Code 6-29-800 (A)(2)(d):

*Profitability*. The fact that a property may be used more profitably, if a variance is granted, may not be considered grounds for a variance. *Groves v. Charleston*, 226 SC459, 85 S.E.2d 708 (1955). Lastly, financial hardship does not automatically constitute unnecessary hardship. On further appeal, the South Carolina Supreme Court affirmed the lower appeals court's ruling in *Restaurant Row Associates v. Horry City*, finding that the business "failed to prove unnecessary hardship." *Restaurant Row Associates v. Horry City*, *Application of Groves v. Charleston*, 226 S.C. at 464, 85 S.E.2d at 710. ("assuming that they will suffer substantially in a financial way ... that alone is not sufficient [to grant a variance]"). The South Carolina high court ruled that "financial hardship does not automatically constitute unnecessary hardship." The state high court also noted that the lower court ruling conformed to U.S. Supreme Court rulings in *Young v. American Mini Theatres, Inc.* (1976) and *City of Renton v Playtime Theatres, Inc.* (1986).

## **V. DRAFT MOTIONS FOR BOA-11-19**

- A. I move that the Zoning Board of Appeals deny BOA-11-19, subject to the findings of fact and conclusions contained in the draft order, dated August 12, 2009 attached as Exhibit 1.
- B. I move that the Zoning Board of Appeals approve BOA-11-19, subject to the following findings of fact and conclusions:
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-19.

## **VI. ZONING BOARD OF APPEALS – SEPTEMBER 14, 2011**

The Sumter City-County Board of Appeals at its meeting on Wednesday, September 14, 2011, voted to approve this variance request subject to the following:

1. Within 6 months, structures 2, 4 & 5 must be removed;
2. Proper screening must be placed to the left side of building (in green below);
3. Structure must be used for personal use only.





**Exhibit 1**  
**Order on Variance Application**  
**Board of Zoning Appeals**

**BOA-11-19, William D. Dangerfield**  
**13 Alma Dr. (County)**  
**September 14, 2011**

---

Date Filed: September 14, 2011

Permit Case No. BOA-11-19

The Board of Zoning Appeals held a public hearing on Wednesday, September 14, 2011 to consider the appeal of William D. Dangerfield for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that Applicant ☐ **has** - ☒ **does not have** an unnecessary hardship because there are no extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

While the parcel is a different size than the surrounding parcels, it is one of the larger properties on this street and therefore has a much larger square footage allotment than the surrounding properties as permitted by the ordinance.

2. The Board concludes that these conditions ☒ **do** - ☐ **do not** generally apply to other property in the vicinity based on the following findings of fact:

These conditions do apply to other property in the vicinity. The adjacent parcels must also adhere to the same development standards, are subject to the same upland buffer and easements, but would not be permitted to build accessory structures of the same square footage as is permitted to this property owner.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☐ **would** - ☒ **would not** effectively prohibit or unreasonably restrict the utilization of the property based on the following findings of fact:

The conditions imposed on this property do not effectively prohibit or restrict the use of the property as there is a house and 4 accessory structures already located on the property. The property owner could replace the older structures

using the same footprint so not to increase the non-conforming per Article 6, Section 6.c.6.

4. The Board concludes that authorization of the variance ☐ **will** - ☒ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☐ **will** - ☒ **will not** be harmed by the granting of the variance based on the following findings of fact:

This structure will not be a detriment to adjacent property or to the public good or the character of the district because the lot size is larger than the others. Also, the only neighbor in attendance is not in opposition, but only present to ask questions.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ **DENIED** – ☒ **GRANTED**, subject to the following conditions:

1. Within 6 months, structures 2, 4 & 5 must be removed;
2. Proper screening must be placed to the left side of building (in green below);
3. Structure must be used for personal use only.



Approved by the Board by majority vote.

Date issued: \_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order  
was mailed.**

---